
**APPEALS BOARD
UTAH LABOR COMMISSION**

CLINTON J. ROBINSON,

Petitioner,

vs.

**STRICKERS SURE TEST, INC. and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0609

Clinton J. Robinson asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's denial of Mr. Robinson's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Robinson filed a claim for workers' compensation benefits from Strickers Sure Test, Inc. and its insurance carrier, Workers Compensation Fund, (hereafter referred to jointly as Strickers) for a right knee injury that occurred on July 14, 2002. There is no dispute that Mr. Robinson suffered a compensable injury; the issue is whether he is entitled to permanent total disability as a result of his injury. Judge Hann held an evidentiary hearing and then referred the medical aspects of the claim to a medical panel. After reviewing the panel's report and other evidence, Judge Hann denied benefits.

In his motion for review, Mr. Robinson argues that Judge Hann erred in (1) relying on the medical panel's opinion, which was not objective, and (2) failing to hold a hearing on his objections to the panel's report.

FINDINGS OF FACT

The Appeals Boards adopts Judge Hann's findings of fact. The following facts are relevant to the motion for review:

On July 14, 2002, Mr. Robinson hyperextended his right knee at work. He suffered a microfracture and underwent right knee arthroscopic surgery. Two weeks after the surgery, Mr. Robinson suffered pulmonary emboli and has since developed chronic venous stasis in his right lower leg that now requires regular Coumadin treatment and wearing of a compression stocking.

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Mr. Robinson has not returned to work since July 28, 2002. He reached maximum medical improvement as of May 29, 2003. At the time of the injury, Mr. Robinson was 33 years of age.

Both parties provided various medical opinions regarding Mr. Robinson's limitations, each opinion varying from the others, including the opinions from Mr. Robinson's three treating physicians. Two functional capacity examinations were also conducted and included in the medical exhibit.

Due to the conflict in the medical opinions concerning Mr. Robinson's limitations and functional capacities, Judge Hann appointed an impartial medical panel. Based on its examination of Mr. Robinson and a review of the entire medical exhibit, the panel opined that Mr. Robinson could work an eight hour work day. The panel stated that two-15 minute breaks and a 30-minute lunch during the work day would permit him to elevate his leg as necessary. The panel further indicated there was no medical reason for Mr. Robinson to miss any days of work due to his condition, despite Mr. Robinson's physicians saying he would miss three to four days a month.

DISCUSSION AND CONCLUSIONS OF LAW

To establish a claim for permanent total disability, Section 34A-2-413 requires Mr. Robinson to prove that (1) he has a significant impairment or a combination of impairments as a result of his work injury; (2) he is permanently and totally disabled; and (3) the work injury was the direct cause of his disability. Judge Hann denied benefits, concluding that Mr. Robinson failed to establish that he is permanently and totally disabled. In his motion for review, Mr. Robinson argues that Judge Hann erred in relying on the panel's opinion because its opinion was not objective. He claims the panel failed to independently review the evidence when it relied on Strickers' medical evidence rather than the opinions of his own treating physicians.

The Appeals Board has carefully reviewed the medical exhibit, including the medical panel's opinion, and finds no evidence to support Mr. Robinson's claim that the panel's report was not objective. Therefore, the Appeals Board finds no error in Judge Hann's consideration of the medical panel's report in making her determination. Furthermore, the Appeals Board has reviewed Judge Hann's decision and finds that it did not rely solely on the panel's opinion, but rather a preponderance of all the medical evidence, including the opinion of Strickers' medical consultant, two functional capacity examinations, and the impartial panel's opinion. Thus, the Appeals Board finds that Judge Hann's decision is supported by the medical evidence.

The Appeals Board notes Mr. Robinson's argument that he should have been granted a hearing on his objections to the panel's opinion. Although such a hearing is statutorily permitted, the Appeals Board does not find that Judge Hann erred in exercising her discretion to deny the request in this case. For these reasons, the Appeals Boards affirms Judge Hann's decision.

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ORDER

The Appeals Board affirms Judge Hann's decision. It is so ordered.

Dated this 30th day of September, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.